

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PROVIDENCE ZUMBO, as Administratrix of the  
Estate of JOHN ZUMBO a/k/a JOHN D. ZUMBO,

CIV. NO. 07 CV 6340 (LMM)

Plaintiff,

-against-

T. AND B. EQUIPMENT COMPANY, INC.,  
ALLEN GEORGE ROTHENBERGER,

Defendants.

-----X

## **EXHIBIT "F"**

**TO**

**DECLARATION IN SUPPORT OF  
PLAINTIFF'S IN LIMINE  
MOTION**



Department of  
Laboratory and Research  
10 Dana Road Valhalla, NY 10595

Westchester  
gov.com

## AUTOPSY REPORT

M2006-1452

Report of death by Dr. Kunjlata Ashar M.D., Medical Examiner

Name: John Zumbo

Residence: 274 Bruce Park Avenue Greenwich, CT

Place of death: Front of 3000 Westchester Avenue

Age: 29 Years

Sex: M

Race/Ethnicity: White

Date & Time- Of Death: 07/07/06 **PRONOUNCED 7:13 AM**  
Examiner notified: 07/07/06 08:25 AM  
Of arrival at scene: 00/00/00 00:00 00

Reported by: P.O.Arce

Primary police agency: Harrison

I hereby certify that I, Kunjlata Ashar, MD have performed an autopsy (in the presence of Dr. Roh, Dr. Hyland) on the above named person at the Medical Examiner's Facility, Valhalla, N.Y., on 07/07/06 12:25 PM.

Signed: Kunjlata Ashar M.D.

Dr. Kunjlata Ashar  
Pathologist/Medical Examiner

A certified true and correct copy.

Kunjlata Ashar MD  
Office of the Medical Examiner



Department of  
Laboratories and Research  
10 Dana Road Valhalla, NY 10595

## AUTOPSY REPORT

**NAME:** John Zumbo

**JOB NUMBER:** 2006-1452

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### EXTERNAL DESCRIPTION:

The body is that of a well developed, well nourished, fair skin male measuring 72 inches in height, weighing 198 lbs and appears to be stated age of 29 years. The body is warm and has no rigidity. Minimal purplish-red lividity is present on the back and is blanching. The scalp hair is shaven. The eyes show equal round pupils measuring 5 mms in diameter, brown irides and pale conjunctivae without petechial hemorrhages. The nasal bones are intact on inspection and palpation. The nasal septum is intact. Both nostrils are empty. The mustache and beard shows stubble of black hair. The teeth are natural. Blood is present in both external auditory meatus. The earlobes are unremarkable. The neck shows centrally located trachea and is free of trauma or deformity. The chest is well expanded and is symmetrical. The abdomen is flat. The external genitalia are those of an adult male. The foreskin is in mid position. Both upper as well as lower extremities are free of deformity. The fingernails are cyanotic. No needle track marks are evident. The back shows normal curvature and is free of trauma or deformity.



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### FOLLOWING INJURIES ARE SEEN ON THE BODY:

The left eyebrow shows superficial laceration measuring  $\frac{1}{4}$  inch in greatest dimension. There are multiple red abrasions and superficial lacerations of left cheek, left side of neck and lateral aspect of left upper arm measuring up to  $\frac{1}{2}$  inch in greatest dimension. The top of left shoulder has a red abrasion measuring 2 by 1 inch. The dorsum of left forearm shows laceration with evulsions of skin measuring 4 inches in greatest dimension. The anterior aspect of left thigh reveals obliquely oriented linear red abrasions over 2 by 2-inch area. The inner aspect of left knee has 2 parallel transversely oriented red abrasion measuring up to 1 inch in greatest dimension. Below the left knee are 2 purplish-red ecchymosis measuring up to  $\frac{1}{2}$  inch in greatest dimension. The inner aspect of right thigh reveals reddish-purple ecchymosis measuring 8 by 6 inches. The inner aspect of the right knee has a red abrasion measuring 1 inch in greatest dimension. The anterior and inner aspect of right lower leg in its upper 3<sup>rd</sup> shows 2 transversely oriented red abrasions measuring  $\frac{3}{4}$  and 1  $\frac{1}{2}$  inch in greatest dimension.



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### PRIMARY INCISION:

The body is opened by usual Y-shaped thoracoabdominal incision. The abdominal pannus measures up to 1 ¼ inch in thickness. The pleural cavities, pericardial sac and peritoneal cavity are free of excess fluid or adhesions. All the abdominal viscera are in the usual anatomical site. The vermiform appendix is present.

### CENTRAL NERVOUS SYSTEM:

The scalp is reflected by usual intermastoid coronal incision. The soft tissues of scalp in right temporoparietal region reveal hemorrhage over 6 by 4-inch area. There is hemorrhage in left temporalis muscle over 1 by 1-inch area. There is a hinge fracture of base of skull involving petrous portion of both temporal bones going behind sella turcica. One of the fracture lines extends upwards and involves the right parietal bone. The underlying dura is intact. The brain weighs 1500 grams. The leptomeninges are thin and transparent. There is no evidence of epidural, subdural or subarachnoid hemorrhage. The sulci and gyri are unremarkable. The gray and white matter is well delineated. No lesions are seen within the brain parenchyma. The cerebellum, midbrain, pons and



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medulla are unremarkable. The blood vessels at the base of the brain are thin walled and widely patent.

The soft tissues and muscles of back of neck in upper cervical region are reflected through the same incision and they fail to reveal hemorrhage. The tectorial membrane is incised and no hemorrhage is seen in the ligaments. There is no hemorrhage in the anterior paraspinal muscles. The cervical spine is intact on inspection and palpation.

### CARDIOVASCULAR SYSTEM:

The heart weighs 440 grams. The epicardium contains usual amount of adipose tissue. There is no dilatation of chambers. The valves are soft and pliable. The measurements of valvular circumferences are as follows: tricuspid 11.5 cms, pulmonic 7 cms, mitral 9.5 cms and aortic 6.5 cms. The endocardium is smooth and glistening. The myocardium is brown and meaty. The right ventricle is 0.5 cms in thickness, while the left ventricle is 1.8 cms in thickness. The coronary ostia are widely patent. The coronary arteries are normal in distribution, thin walled and widely patent. The aorta and its major branches have smooth elastic walls. The inferior vena cava is unremarkable.



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### NECK ORGANS:

The hyoid bone and thyroid cartilages are intact. The strap muscles are free of hemorrhage. The thyroid is of usual adult size and has brown colloidal parenchyma. The laryngeal and tracheal mucosa is unremarkable. No foreign material is present in the <sup>by</sup>lumina.

### RESPIRATORY SYSTEM:

Each lung weighs 670 grams. The visceral pleura is smooth and glistening. Multiple contusions in involve all lobes of lung measuring up to 3 inch in greatest dimension. The cut surface reveals areas of well-delineated red zones measuring up to 4 mms in greatest dimension giving it a leopard skin appearance. Pink frothy fluid oozes on cut surface. The bronchi contain pink frothy fluid. The pulmonary arteries are patent.

### GASTROINTESTINAL SYSTEM:

The esophagus is lined by intact mucosa. The stomach contains about 600 ccs of brown liquid. No food particles are identified. The gastric mucosa is intact and shows usual rugal pattern. The duodenum is free of ulceration. The



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jejunum, ileum and large intestines are unremarkable. The vermiform appendix is present.

### **HEPATOBIILIARY SYSTEM:**

The liver weighs 1790 grams. Its capsule is smooth and glistening. The cut surface shows preserved lobular architecture, is brown and is of usual consistency. The gallbladder contains about 10 ccs of bile. The gallbladder mucosa is green and velvety.

### **SPLEEN:**

The spleen weighs 200 grams. Its capsule is smooth and glistening. The cut surface is dark purplish-red and shows usual trabecular and follicular pattern.

### **PANCREAS:**

The pancreas lies in the usual anatomical site, is of usual adult size and has tan lobular parenchyma.

### **ADRENALS:**

Both adrenals lie in the usual anatomical site, are of usual adult size and have golden yellow cortices and brownish medulla.





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### GENITOURINARY SYSTEM:

The right kidney weighs 180 grams, while the left kidney weighs 200 grams. Their capsules strip with ease. The cortical surfaces are smooth. The corticomedullary junction is well delineated. The calices, pelves and ureters are patent. The urinary bladder contains about 30 ccs of clear yellow urine. The urinary bladder mucosa is unremarkable. The prostate is of usual adult size and is grossly unremarkable. Both testes are descended in scrotum. Their cut surfaces are tan. The seminiferous tubules can be strung out with ease.

### MUSCULOSKELETAL SYSTEM:

The muscles are well developed. Fractures of skull are described above. There is fracture of medial end of right clavicle. The right 1<sup>st</sup> rib is fractured in parasternal location while right 2<sup>nd</sup> rib is fractured in midclavicular line. The soft tissues and muscles surrounding above-mentioned fractures reveal hemorrhage. All other bones are intact on inspection and palpation.



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### **LYMPHATIC SYSTEM:**

There is no evidence of lymphadenopathy.

### **PERTINENT ANATOMICAL FINDINGS:**

BLUNT FORCE TRAUMA OF BODY SURFACE

FRACTURES OF SKULL, CLAVICLE AND RIBS

CONTUSIONS OF LUNGS

ASPIRATION OF BLOOD

CARDIOMEGALY, HEART WEIGHT 440 GRAMS

PULMONARY EDEMA AND CONGESTION.



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### CAUSE OF DEATH:

FRACTURES OF SKULL, CLAVICLE AND RIBS; CONTUSIONS OF  
LUNGS; ASPIRATION OF BLOOD. DRIVER; 2 VEHICLE COLLISION, 7/7/06,  
ABOUT <sup>7.04</sup>6:48 AM, WESTCHESTER AVENUE, HARRISON, NY.

UNCLASSIFIED

*Kunjata Ashar MD 9.18.06*

Kunjata Ashar, MD

Pathologist/Deputy Medical Examiner

KA/mk

July 17, 2006



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## AUTOPSY REPORT

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### TOXICOLOGY:

SAMPLES OF VITREOUS HUMOR, BLOOD, BILE, URINE, STOMACH CONTENTS, PORTIONS OF LIVER AND BRAIN ARE SUBMITTED FOR DRUG AND ALCOHOL ANALYSIS.

### HISTOLOGY:

THE TISSUES ARE SAVED.

KA  
Kunjata Ashar, MD

Pathologist/Deputy Medical Examiner

KA/mk

July 17, 2006

WESTCHESTER COUNTY  
DEPARTMENT OF  
LABS AND RESEARCHForensic Toxicology  
10 Dana Road Valhalla, NY 10595

M2006-1452

## TOXICOLOGY REPORT

Deceased: John Zumbo

Age: 29 Years

Dr. Kunjlata Ashar

Samples Submitted for Analysis

<input checked="" type="checkbox"/> Blood(Site: Heart)	<input checked="" type="checkbox"/> Urine	<input checked="" type="checkbox"/> Bile	<input checked="" type="checkbox"/> Liver	<input checked="" type="checkbox"/> Brain	<input checked="" type="checkbox"/> Gastric Contents	<input checked="" type="checkbox"/> Vitreous Humor
<input checked="" type="checkbox"/> Blood - Femoral						

Drug Screen (Confirmed and Unconfirmed)

<u>Specimen</u>	<u>Result</u>	<u>Technique</u>
Blood	No drugs detected	IA and LCMS
Urine	No drugs of abuse detected	IA

Notice: All confirmed results indicated below.

Quantitative Results

<u>Specimen</u>	<u>Component</u>	<u>Result</u>	<u>Technique</u>
Blood	Ethanol	Negative	GCFID

2006 AUG 18 PM12:08

Signature Elizabeth Spratt 8/18/06 Report Date: 08/18/06

Elizabeth Spratt MS, DABFT

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CIV. NO. 07 CV 6340 (LMM)

Plaintiff,

-against-

T. AND B. EQUIPMENT COMPANY, INC.,  
ALLEN GEORGE ROTHENBERGER,

Defendants.  
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## **EXHIBIT "G"**

**TO**

**DECLARATION IN SUPPORT OF  
PLAINTIFF'S IN LIMINE  
MOTION**

LOUIS S. ROH, MD  
2 WALNUT COURT  
WHITE PLAINS, NY 10605  
.....  
TELEPHONE: 914-261-0839

July 1, 2008

Joseph P. Tucker, Esq.  
Kurzman, Karelsen & Frank, LLP  
Attorneys at Law  
230 Park Avenue  
New York, NY 10169

Re: Zumbo v. T&B Equipment and Allen George Rothenberger

Dear Mr. Tucker:

As per your request, I have reviewed the following materials, which you forwarded to me on above captioned matter.

1. Police Accident Report, 7/7/06.
2. Truck and Bus Supplemental Police Accident Report, 7/7/06.
3. Statement of Allen Rothenberger, 7/7/06.
4. Witness statement of Jodi Perrone, 7/7/06.
5. Witness statement of Tho X Cao, 7/7/06.
6. Autopsy and Toxicology Report, 7/7/06.
7. Deposition testimony of Allen Rothenberger, 6/11/08.
8. Three scene photos of John Zumbo, accident victim.

Mr. John D. Zumbo (DOB 10/16/77, 274 Bruce Park Avenue, Greenwich, Ct 06830) was a driver of 2007 Cadillac SUV heading north on Webb Avenue, Harrison, NY when his vehicle was struck on the driver side at the intersection of Westchester Avenue by 2007 International Truck operated by Allen George Rothenberger (DOB 3/5/57, 871 East Jefferson Drive, Palmyra, Va 22963) heading east on Westchester Avenue, Harrison, NY around 6:50 a.m., 7/7/06. Mr. Rothenberger, two witnesses, police officers and EMT went over to Mr. Zumbo's vehicle and found him trapped in his vehicle, alive, breathing, making gurgling sound, taking deep breath every 5 seconds and bleeding from his nose. The resuscitation attempts were unsuccessful and he was pronounced dead at 7:13 a.m., 7/7/06 by the EMT.

His remains were removed to the Office of the Medical Examiner, Valhalla, Westchester County, NY.

Zumbo v. T&B Equipment and Allen Rothenberger

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The autopsy examination was conducted by Dr. Kunjlata Ashar on 7/7/06. The body was that of well developed, well nourished white male measuring 72 inches tall and weighing 198 pounds appearing to be the stated age of 29 years. The left eyebrow showed superficial laceration. The left cheek, left neck and left arm showed abrasions and lacerations. The left forearm, left thigh, left knee, right thigh, right knee and right lower leg showed abrasions. The left temporalis muscle and right temporo-parietal region showed hemorrhages. The skull showed a hinge fracture at the base. There was no hemorrhages in the cranial cavity. There were no injuries to the brain. The right clavicle, and right 1<sup>st</sup> and 2<sup>nd</sup> ribs were fractured. Each lung weighed 670 gms and showed multiple contusions. The sections showed areas of well-delineated red zones giving it a leopard skin appearance (aspiration of blood into the lungs). The heart weighed 440 gms and showed no injuries. The liver, pancreas, kidneys, spleen and adrenal glands were normal.

The toxicology report showed negative for ethanol (drinking alcohol) an drug of abuse.

The cause of death was certified as "Fractures of skull, clavicle and ribs; Contusions of lung; Aspiration of blood".

The aspiration of blood into the lungs requires active respiration (inhalation) by an individual. As long as there is an introduction of oxygen into the lungs by respiration, the oxygenated blood will flow to the brain and it maintains normal function of the brain (consciousness and feeling of pain from the injuries). The aspiration of blood then causes asphyxiation followed by coma and death.

Mr. John Zumbo did not sustain any immediately fatal injuries to his body, i.e., laceration of the brain stem, rupture of the heart or transection of aorta with massive hemorrhage.

It is my opinion with a reasonable degree of medical certainty as a Licensed Physician in the State of New York and Board Certified Pathologist by the American Board of Pathology in Anatomic Pathology, Clinical Pathology and Forensic Pathology that Mr. John Zumbo was alive, conscious and suffering excruciating pain from injuries to his head, extremities and fractures of skull, clavicle and ribs. He was having difficulty of breathing from the aspiration of his own blood, choking sensation, anxiety, helplessness and fear of impending death as he was trapped in his vehicle for approximately 3 to 5 minutes before he lapsed into coma and death.



Louis S. Roh, MD  
Forensic Pathologist